

IOWA WORKFORCE DEVELOPMENT  
Unemployment Insurance Appeals Section  
1000 East Grand—Des Moines, Iowa 50319  
DECISION OF THE ADMINISTRATIVE LAW JUDGE  
68-0157 (7-97) – 3091078 - EI

JOSEPH H GLUBA  
800 H AVE NW  
CEDAR RAPIDS IA 52405

DALE LEE DIST CO  
9925 – 6<sup>TH</sup> ST SW  
CEDAR RAPIDS IA 52404 9074

Appeal Number: 05A-UI-06809-DWT  
OC: 06/05/05 R: 03  
Claimant: Respondent (1)

**This Decision Shall Become Final**, unless within fifteen (15) days from the date below, you or any interested party appeal to the Employment Appeal Board by submitting either a signed letter or a signed written Notice of Appeal, directly to the **Employment Appeal Board, 4<sup>th</sup> Floor—Lucas Building, Des Moines, Iowa 50319.**

The appeal period will be extended to the next business day if the last day to appeal falls on a weekend or a legal holiday.

STATE CLEARLY

1. The name, address and social security number of the claimant.
2. A reference to the decision from which the appeal is taken.
3. That an appeal from such decision is being made and such appeal is signed.
4. The grounds upon which such appeal is based.

YOU MAY REPRESENT yourself in this appeal or you may obtain a lawyer or other interested party to do so provided there is no expense to Workforce Development. If you wish to be represented by a lawyer, you may obtain the services of either a private attorney or one whose services are paid for with public funds. It is important that you file your claim as directed, while this appeal is pending, to protect your continuing right to benefits.

---

(Administrative Law Judge)

---

(Decision Dated & Mailed)

Section 96.5-2-a - Discharge

STATEMENT OF THE CASE:

Dale Lee Distributing Company (employer) appealed a representative's June 20, 2005 decision (reference 01) that concluded Joseph H. Gluba (claimant) was qualified to receive unemployment insurance benefits, and the employer's account was subject to charge. After hearing notices were mailed to the parties' last-known addresses of record, a telephone hearing was held on July 19, 2005. The claimant failed to respond to the hearing notice by contacting the Appeals Section prior to the hearing and providing the phone number at which he could be contacted to participate in the hearing. As a result, no one represented the claimant. Matt Petrzelka, the employer's legal counsel, represented the employer. Marty Looney, the operations director, and Polly Morris, the human resource director, testified on the employer's behalf. Based on the evidence, the arguments of the employer, and the law, the administrative law judge enters the following findings of fact, reasoning and conclusions of law, and decision.

ISSUE:

Did the employer discharge the claimant for work-connected misconduct?

FINDINGS OF FACT:

The claimant started working for the employer on October 24, 1999. He worked full time in the warehouse loading merchandise. Looney was the claimant's supervisor. The claimant received a copy of the employer's zero-tolerance drug policy.

Prior to May 31, 2005, the claimant's job was not in jeopardy. On May 31, 2005, the claimant's name was randomly chosen to take a drug test. The claimant submitted to the drug test and a certified lab tested the claimant's sample. The laboratory's medical review officer talked to the claimant about the results of his drug test. The claimant had a positive drug test result for an illegal drug. After the medical review officer talked to the claimant about any possible explanation for the positive test result, the medical review officer told the claimant he could have the split sample tested. The medical review officer informed the employer about the result of the positive drug test.

The employer learned about the positive drug test on June 3, 2005. The claimant told the employer that his drink must have been spiked. Pursuant to its drug policy, the employer discharged the claimant on June 3, 2005. During an exit interview on June 6, the claimant admitted that his drink had not been spiked, but that he had knowingly used an illegal drug.

The claimant established a claim for unemployment insurance benefits during the week of June 5, 2005. He filed a claim for the week ending June 18, 2005. The claimant received \$310.00 in benefits for this week.

REASONING AND CONCLUSIONS OF LAW:

A claimant is not qualified to receive unemployment insurance benefits if an employer discharges him for reasons constituting work-connected misconduct. Iowa Code §96.5-2-a. For unemployment insurance purposes, misconduct amounts to a deliberate act and a material breach of the duties and obligations arising out of a worker's contract of employment. Misconduct is a deliberate violation or disregard of the standard of behavior the employer has a right to expect from employees or is an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to the employer. Inefficiency, unsatisfactory conduct, unsatisfactory performance due to inability or incapacity, inadvertence or ordinary negligence in isolated incidents, or good faith errors in judgment or discretion are not deemed to constitute work-connected misconduct. 871 IAC 24.32(1)(a).

The Iowa Supreme Court has ruled that an employer cannot establish disqualifying misconduct based on a drug or alcohol test performed in violation of Iowa's drug and alcohol testing laws. Eaton v. Iowa Employment Appeal Board, 602 N.W.2d 553, 558 (Iowa 1999). Under Iowa Code §730.5(7)i(1) and (2) if the employer receives a confirmed positive result, the employer must notify the employee by certified mail, return receipt requested, of the results of the test and the right to request and obtain a confirmatory test of the secondary sample. While the employer followed the other provisions of Iowa's drug and alcohol testing laws, the employer did not follow this provision. Instead, the employer assumed the medical review

officer told the claimant about the split sample confirmatory test. There is no evidence the claimant received a letter advising him of this right.

At the time the employer discharged the claimant, June 3, the claimant asserted someone had spiked his drink. The fact the claimant admitted he used the illegal drug after he was discharged does not relieve the employer from following Iowa's drug and alcohol testing laws. As a result, the claimant is qualified to receive unemployment insurance benefits as of June 5, 2005.

**DECISION:**

The representative's June 20, 2005 decision (reference 01) is affirmed. The employer discharged the claimant for business reasons that do not constitute work-connected misconduct. As of June 5, 2005, the claimant is qualified to receive unemployment insurance benefits, provided he meets all other eligibility requirements. The employer's account may be charged for benefits paid to the claimant.

dlw/kjw